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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,880	01/19/2001	Chris L. Jones	EXT-071	9748
21323	7590	05/27/2004	EXAMINER	
TESTA, HURWITZ & THIBEAULT, LLP HIGH STREET TOWER 125 HIGH STREET BOSTON, MA 02110			SIEW, JEFFREY	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/766,880	JONES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey Siew	1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 March 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24, 30 and 32-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-24 and 42-63 is/are allowed.
- 6) Claim(s) 30, 32, 35 and 36 is/are rejected.
- 7) Claim(s) 33, 34 and 37-41 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

**Request for Continued Examination**

1. The request filed on 3/11/04 for a Request for Continued Examination (RCE) under 37 CFR 114 is acceptable. An action on the RCE follows. Pending claims 1-24,30 and 32-63 are to be examined.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 30,32, 35 & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Provonchee et al (US5,277,915 Jan. 11, 1994) in view of Foster (US5,485,277 Jan. 16, 1996).

Provonchee teach an apparatus for capturing analyte comprising material comprising pores wherein material supports a gel matrix (see whole doc. esp. abstract and col. 7 lines 25-30). They teach a network of fracture channels to hold gel (see abstract).

Provonchee et al do not teach covalent bonding of ligands

Foster et al teach covalent bonding of ligands (see whole doc. esp. col.12 lines 5-20).

They teach labeling (see col. 12 line 43).

One of ordinary skill in the art would have been motivated to apply Foster et al's covalently binding ligand to Provonchee et al's gel matrix in order to bind various targets. It would have been prima facie obvious to apply Foster et al's teaching of covalently binding of ligands to Provonchee et al's gel matrix in order to detect different targets such as proteins or nucleic acids.

## SUMMARY

4. Claims 1-16, 42,43,44-47, 48-55 are allowable. Claims 33,34,37-41, are free of the prior art but objected to for depending on rejecting claim. There is no prior art that teach or suggest an apparatus with a base having a pair of electrode channels with a different electrode extending through each channel and migration channel extending between the electrode channels with an

enlarged slot in the opening of the migration channel . The closest prior art is Harrington et al (US5,837,116 Nov. 17, 1998) who teach a two dimensional electrophoresis apparatus with two electrodes but do not teach or suggest an enlarged slot in migration channel.

Claims 17-24 & 56-63 are allowable. There is no prior art that teach a capture gel holder comprising a handle , a plurality of teeth projecting from the handle at least one of the teeth having a bore through the tooth and a gel matrix overlying the bore. The closest prior art is Rice et al (US5,972,188 Oct. 26, 1999) who teach a comb with teeth but do not teach or suggest a teeth with bores with gel.

## CONCLUSION

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Siew who can be reached at 571-272-0787. The e-mail address is Jeffrey.Siew@uspto.gov. However, the office cannot guarantee security through the e-mail system nor should official papers be transmitted through this route. The examiner is on flex-time schedule and can best be reached on weekdays from 6:30 a.m. to 3 p.m. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached on (571)272-0782.

Any inquiry of a general nature, matching or filed papers or relating to the status of this application or proceeding should be directed to the Tracey Johnson for Art Unit 1637 whose telephone number is (571)272-0534.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The 1600 Tech Center FAX is (703)-872-9306.

*Jeffrey Siew*  
**JEFFREY SIEW**  
**PRIMARY EXAMINER**

May 24, 2004